IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Excise Reference No. 16 of 2000

Reserved on : 23rd June, 2009

Date of Decision: 4th July, 2008

Commissioner, Central Excise Commissionerate-I	Petitioner
Versus	
M/s Chandra Laxmi Tempered Glass Co. Pvt. Ltd.	Respondent

Coram
The Hon'ble Mr. Justice R.B.Misra,J.

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? Yes.

For the petitioner: Mr.Sandeep Sharma, Assistant Solicitor General of India.

For the respondent: Mr.Ajay Vaid, Advocate.

Per Sanjay Karol, J.

The present Excise Reference was admitted on the following question of law:-

> "Whether the Tribunal (CEGAT) was right in allowing Modvat Credit on the strength of invoices which did not satisfy the provisions/ criteria laid down under Rule 57GG of the Central Excise Rules, 1944 read with Notification No. 23-95/CE(NT) dated 30.5.95."

M/s Chandra Laxmi Tempered Glass Co. Pvt. Limited, Barotiwala (hereinafter referred to as assessee) was registered with the

[1] Whether the reporters of Local Papers are allowed to see the Judgment?

Central Excise Range, Baddi, vide Registration No.21/CLTG/B/92 (dated 29.6.1992) for the manufacture of toughened glass falling under sub heading 7004 of the schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as the Act). The assessee availed Modvat credit facility. During the course of checking of RT-12 returns for the months of September, 1995 to November, 1995, it was found that the assessee had taken credit of Rs.18678/- and Rs.14652/- on the strength of the invoices issued under Rule 57GG of the Central Excise Rules, 1944 (hereinafter referred to Rules). These invoices had been issued by the dealers of the assessee. It appeared that the credits were wrongly taken as invoices were not in conformity with the Rules and the Notification No. 23/95-CE(NT) dated 30.5.1995 (hereinafter referred to Notification in question). Further it was found that duty particulars of the dealer were not corresponding to the duty particulars of the manufacturer as shown on the invoices.

A show cause notice was issued and the assessee was heard. After hearing the submissions of the parties and also examining the record, the Assistant Commissioner, Custom and Central Excise Division, Khalini, Shimla, vide order dated 27.7.1998 (Annexure PA) disallowed the Modvat credit amounting to Rs.33,330-00 and ordered recovery under Rule 57-I of the Rules. No penalty was imposed. It was also ordered that the amount be deposited within three months failing which interest as stipulated under Section 11 A of the Central Excise Act, be charged.

Aggrieved by the same, the assessee filed an appeal being Appeal No.1636/CF/CHD/99 before the Commissioner (Appeals), Central Excise and Customs, Chandigarh, and in terms of its order dated 28.9.1999, the order passed by the Commissioner was set aside on the ground that the

substantive benefit could not be denied to the assessee only for the reason that particulars required to be pre-printed, in terms of notification in question, had been written in hand as the same met the requirement of the law. Aggrieved by the same, the Revenue filed an appeal No. E/3044/99-NB, before the Customs, Excise & Gold (Central) Appellate Tribunal, New Delhi. The Tribunal upheld the assessee's contention that the substantive requirements of law had been complied with and, therefore, there was no justification to deny Modvat credit for procedural lapses. The Tribunal further held as under:-

> "I find that the Tribunal has been consistently taking the view that modvat credit should not be denied for merely the reason that the invoices were not pre-printed but were hand written. Since the issue has been properly appreciated by the Commissioner (Appeals), I am not inclined to interfere with his order. Thus, the appeal filed by the department is hereby dismissed."

We have heard the learned counsel for the parties and also perused the record.

Rule 57GG of the Rules provides that the invoice to be issued by every person under Rule 57G shall contain the details as prescribed by the Central Board of Excise and Customs or as the case may be by the Collector of Central Excise.

In accordance with Rule 57 GG (4) the Notification in question has been issued, which is reproduced as under:-

> "Notification:23/95-CE(NT) dated 30-May-1995
>
> Invoice for Modvat – Particulars to be incorporated
>
> In excise of the powers conferred by sub-rule (4) of rule 57GG of the Central Excise Rules, 1944 the Central Board of Excise and

Customs prescribes the following details which an invoice will contain namely:-

(i) Particulars mentioned in the Annexure;

(ii) Colours of the invoice shall be white, pink, yellow and green, respectively, for original, duplicate, triplicate and quadruplicate copies thereof;

(iii) First and last copy of the invoice book shall be pre-authenticated by the jurisdictional Range Superintendent of the Central Excise.

Provided that the invoice generated on computer shall not be pre-authenticated;

(iv) the invoice shall be pre-printed, containing name, address and Central Excise registration number of the registered person issuing the invoice, name of the Range/Division/Collectorate in whose jurisdiction such person is registered, and the Income-tax and Sales-tax registration number.

2. This notification shall come into force on the 1st day of August, 1995.

ANNEXURE-II

PROFORMA FOR ISSUE OF INVOICE UNDER

RULE 57G OR 57T

INVOICE NO.

1. (a) Name and address of Registered person issuing the invoice :
   (b)(i) central Excise Registration No. :
   (ii) Sales Tax Registration No. :
   (iii) Permanent Income Tax No. and GIR No. if any :
   (c)(i) Full postal address of Range :
   (ii) Name of Division and Collectorate :
   (d) Description of goods :

(e) Identification marks and number :

(f) Quantity (Nos./Weight/Litre/Metre) :

(g) Value in Rupees (in words and figures) :

(h)(i) Rate of duty :

(ii) Amount of duty per unit :

(iii) Amount of duty involved in the quantity at (serial No.1(f) in words and figures :

(i) Date and time of issue of invoice :

(j) Date and time of removal of goods :

(k) Mode of transport and vehicle No. :

2. (a)(i) Name and address of the Consignee :

(ii) Central Excise Registration No. :

(iii) Name of Range/Division/ Collectorate :

3. Name and address of the buyer, if he is not consignee :

4. (a)(i) Name and address of the supplier of goods if he is not manufacturer/ importer :

(ii) Central Excise Registration No. :

(iii) Full postal address of Range :

(b) Invoice No. :

(c) Entry and page No. in RG-23D corresponding to invoice at (b) above :

5. (a) (i) Name and address of manufacturer/ importer, if he is not the supplier. :

(ii) Central Excise Registration No. :

(iii) Full postal address of Range :

(iv) Name of Division and Collectorate :

(b)Invoice No./Bill of Entry No. :

(c) Description of goods :

(d) Identification marks and numbers :

(e) Quantity (Nos./weight/Litre/Metre :

(f) Assessable value in Rupees (in words and figures) :

(g)(i) Rate of duty :

(ii) Amount of duty per unit :

(iii) Amount of duty paid (both in words and figures)

Note: The particulars mentioned in Sl.No.1(e),(j), 2(k), if not known at the time of issue of invoice may be filled at the time of dispatch of the goods from the godown.

(Notification No.23/05-C.E.(N.T.), dated 30.5.1995)"

Rule 57GG also provides that each foil of invoice book shall be authenticated by the owner or the working partner/Managing Director/ company Secretary before being brought into use by the registered person and before that is done serial number of the invoice shall be intimated to the Assistant Collector of Central Excise under due acknowledgement receipt.

Modvat Credit under Rule 57G and Rule 57GG can be availed only on compliance of the relevant provisions of the Rules and Notifications issued thereunder. From the perusal of Notification in question, it is evident that invoice requires various particulars to be furnished and at least four such particulars are required to be pre-printed i.e. (i) name and address of the registered person (ii) Central Excise Registration No. of the person issuing the invoice; (iii) name of the Range/ Division/ Collectorate in whose jurisdiction such person is registered and (iv) income tax and Sales tax registration number. All these particulars are required to be pre-printed on the invoice. The notification even prescribes the colours of the invoices. It is very specific and has a meaning and purpose behind it. The Notification appears to have been issued only to curb the practice of taking credit both on

the original and duplicate copy of the invoice and by resorting to similar double credits against single consignment by falsification of documents by various methods. The Government was being defrauded and measure was taken by the Revenue only to detect such wrong credits and take appropriate action against the erring assessees and concerned persons. This is evident from Circular No.68/68/94-CX dated 24.10.1994 which has been brought to our notice by Ms. Radhika Gautam, Advocate, who had assisted the Court on our asking.

As per Concise Oxford English Dictionary, Indian Edition, 11th Edition, the word "preprint" means as under:

> "pre-print: print in advance. a printed document issued before full publication."

The requirement of the Statute is clear and unambiguous and, therefore, such of those particulars which were required to be pre-printed could not have been written by hand in order to avail the credit as stipulated under rule 57G of the Rules.

Mr. Sharma, learned Assistant Solicitor General of India, has drawn our attention to a decision of the Apex Court in *Indian Aluminium Company Limited vs. Thane Municipal Corporation,* 1992 Supp (1) SCC 480, to press the point that even the procedural requirements of law are required to be fulfilled being mandatory in nature.

Undoubtedly the requirement of the language is clear and unambiguous. The provisions of Statute and the Notification, keeping in view the object and the purpose, had to be fully complied with in letter and spirit. The requirements are mandatory and are not procedural as is sought to be argued on behalf of the assessee. The Legislative intent, the object and

purpose is to check the defrauding of the Government by the assessees resorting to similar double credits against single consignment by falsification of documents by various methods. The legislature only requires four particulars to be pre-printed, which in any event are within the prior knowledge of and pertains to the person issuing the invoice. Therefore, there is no justification for not complying with the same. The requirement of the law is that invoices were to be pre-printed and not hand written. The Legislative intent is evident from every word used in the Statute. The same has to be complied with. If the view taken by the Tribunal is accepted it would render the Statute redundant. Therefore, on the principle of Golden Rule of Interpretation, the view taken by the Tribunal is unacceptable.

Learned counsel for the assessee has referred to and replied upon a decision rendered by the Apex Court in *Shree Hari Chemicals Export Ltd. vs. Union of India and another,* (2006) 1 SCC 396 to contend that wrong mentioning of the provision would not render the claim of the assessee ineligible. According to him, the assessee is claiming benefit under Rule 57G and 57GG of the Rules. The decision relied upon is not relevant to the issue in question. In order to avail modvat credit under Rule 57G compliance of statutory provisions of rule 57GG are absolutely necessary. The submission, therefore, has no force.

He has also referred to a decision delivered by the High Court of Judicature for Rajasthan at Jodhpur, in *J.K.Industries Ltd. vs. Union of India,* 2008(223) E.L.T. 372 (Raj.), to contend that the assessee cannot be faulted for the lapses committed by the dealer and on that ground the credit cannot be disallowed. We are in respectful disagreement with the view taken by the Court in *J.K.Industries Ltd. (supra)* as the Apex Court in *Shree Hari*

Chemicals Export Ltd. (supra), has clearly held that even procedural requirements need to be strictly complied with before availing credit facilities.

For the aforesaid discussion, we are of the view that the Tribunal and the Authority below were not correct in reversing the view taken by the Assistant Collector. The Tribunal was not right in allowing the Modvat Credit on the strength of the invoices which did not specify the provisions/criteria laid down under Rule 57GG of the Rules and also the Notification dated 30.5.1995.

The question of law is answered accordingly. The orders dated 28.9.1999 passed by Commissioner (Appeals) Central Excise & Customs, Chandigarh and 26.5.2000 passed by Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi, are set aside. The reference is answered accordingly,.

(R.B.Misra),
Judge.

4th July, 2008
(C)

(Sanjay Karol)
Judge.